

Commonwealth of Kentucky
Kentucky Board of Dentistry
312 Whittington Parkway, Suite 101
Louisville, Kentucky 40222

Approved and Filed
NOV 24 2010
KBD

Agency Case Number 07-41A & B and 09-111 and 09-121
Administrative Action No. 09-KBD-023

Kentucky Board of Dentistry

Complainant

Settlement Agreement

Todd Kolter, D.M.D.
(License No. 5951)

Respondent

* * * * *

Whereas, the Kentucky Board of Dentistry (hereafter the "Board") and Todd Kolter, D.M.D., 7863 St. Andrews Church Road, Louisville, Kentucky 40258 (hereafter the "Respondent"), entered into an Immediate, Temporary Suspension and Settlement Agreement dated November 13, 2009 (approved by the Board on November 21, 2009), which under its terms included, but was not limited to, suspension of the Respondent's license for a period of one (1) year) with no opportunity for reinstatement until at least November, 2010, participation in the Well Being Program and continuing education; and

Whereas, for the purposes of this Settlement Agreement, the Respondent admits the Board would be able to prove by a preponderance of the evidence at an administrative hearing before the Board as follows:

- (1) The Board would be able to prove at least one (1) count of a violation of KRS 313.080(2)(d) [formerly KRS 313.160(6)] for chronic or persistent alcoholism,

Whereas, the Respondent admits for the purposes of this Settlement Agreement the Respondent has been in violation of KRS Chapter 313.080(2)(d), and the Board has substantial evidence of a violation of law to justify the temporary suspension of the Respondent's dental license under KRS [formerly KRS 313.195], and;

Whereas, the Respondent has evidenced a strong desire for sobriety and for reinstatement of his license to practice dentistry in the Commonwealth of Kentucky, and agrees that he maintain appropriate, active medical and mental health treatment, as well as compliance with all of the terms and conditions of this Settlement Agreement; and

Whereas, Respondent has petitioned for the lifting of the Temporary Suspension of his license to practice dentistry in the Commonwealth and the Board agrees, under the terms and condition of this Settlement Agreement, to lift Respondent's Temporary Suspension.

Now, therefore, it is hereby stipulated and agreed between the undersigned parties this matter shall be settled and resolved upon the following terms as contained in this Settlement Agreement:

Voluntary Waiver of Rights

The Respondent has had the opportunity at all times to seek the advice from competent counsel of choice. No coercion has been exerted upon the Respondent, nor have any promises been made other than those reflected in this Settlement Agreement. The Respondent has freely and voluntarily entered into this Settlement Agreement, motivated only by a desire to resolve the issues addressed herein. The Respondent has executed this Settlement Agreement only after a careful reading of it and a full understanding of all of its terms. The Respondent waives the right to challenge any agreed upon term or condition of this Settlement Agreement notwithstanding any other

statutory provision of KRS Chapter 313, and the Respondent expressly agrees those agreed upon terms and conditions contained therein are exclusively a matter of private right.

The Respondent is fully aware of the Respondent's rights to contest charges in a formal hearing. These rights include: representation by an attorney at the Respondent's own expense, the right to a public hearing on any charges or allegations filed, the right to confront and cross-examine witnesses called to testify against the Respondent, the right to present evidence on the Respondent's own behalf, the right to compulsory process to secure the attendance of such witnesses, the right to testify on the Respondent's own behalf, the right to receive written findings of fact and conclusions of law supporting the decision on the merits of the charges, the right to obtain judicial review of the Board's decision, and the right to appeal any final order of the Board to the Circuit Court of the county in which the Board met as otherwise allowed by KRS 313.090(10) regarding any Final Order of the Board. All of these rights are being voluntarily waived by the Respondent in exchange for the Board's acceptance of this Settlement Agreement.

Jurisdiction

The Respondent acknowledges that the Board has jurisdiction over the Respondent and the conduct that has precipitated this Settlement Agreement. The Respondent also acknowledges the Board has the legal power to take disciplinary action, up to and including denial and/or revocation of the Respondent's reinstatement of his license to practice dentistry, upon proof of any allegations filed against the Respondent.

The Respondent acknowledges the Board will retain jurisdiction over this matter until all terms and conditions set forth in this Settlement Agreement have been met to the satisfaction of the Board.

Publication of Settlement

The Respondent acknowledges that, once adopted by the Board, this Settlement Agreement may be considered a public document, available for inspection at any time by any member of the public under the Kentucky Open Records Act. Further, the Respondent understands that the Board is free to make any use it deems appropriate of the contents of this Settlement Agreement, which shall include the Board's ability to share the content of this Settlement Agreement with any governmental or professional board or organization and Board newsletter under KRS 313.090(20) [formerly 201 KAR 8:400 § 5] as well as availability from the Board's website.

Probationary terms and conditions upon reinstatement of license.

The Board agrees to lift the suspension of the Respondent's dental license as set forth above and more fully set forth in the November 21, 2010 Settlement Agreement, the Board shall notify the Respondent in writing. As specific conditions to the reinstatement of Respondent's license, Respondent not only agrees to comply with all statutes, rules and regulations, but shall further comply with the following terms and conditions:

1) The Respondent's license to practice dentistry shall be placed on probation for a period of five (5) years from the date the Respondent's dental license is reinstated, and;

2) The Respondent shall maintain active membership under a contract with the Well-Being Committee of the Board for so long as the Respondent holds a license to practice dentistry from the Board and shall provide a copy of such contract to the Board upon request, and which contract shall include the following provisions:

a) The Respondent shall commence and continue active mental health treatment by a Kentucky-licensed mental health professional approved by a designated representative of the Well-Being Committee, such treatment being not less than one (1) session every three (3) months, or as otherwise consistent with a written plan of care by the approved Kentucky-licensed mental health professional, and;

b) The Respondent shall provide, upon request and within a reasonable time, a written status report regarding the Respondent's mental health treatment and progress not less than four (4) times per year to the Well-Being Committee, and;

c) The Respondent shall comply with taking all medication(s) as prescribed and as directed by the Respondent's Kentucky-licensed mental health professional, and;

e) The Respondent shall submit to random drug/alcohol screens at the cost of the Respondent.

3) The Respondent shall abstain from all alcohol use or consumption, as well as abstain from the use of illegal drugs or the illegal use of drugs or the use of scheduled drugs, except as prescribed by a duly licensed practitioner for a documented, legitimate medical purpose for the Respondent, for as long as the Respondent holds a license to practice dentistry from the Board, and;

4) The Respondent shall successfully complete, not later than July 1, 2011, and provide written proof of such completion to the Board not later than ten (10) days after its completion, a Board-approved continuing education course of at least twelve (12) hours, said continuing education course shall be in addition to the hours otherwise required by 201 KAR 8:530 [formerly 201 KAR 8:140], consisting of either:

a) the Clinical Applications of the Principles in Treatment of Alcoholism and Substance Abuse ("CAPTASA") conference offered in Lexington, Kentucky, on or about January, 2011, or;

b) the University of Utah's School on Alcoholism and Other Drug Dependencies continuing education course, or;

c) any other Board-approved, similar continuing dental education course.

Non-Practice by the Respondent, or non-residency in the Commonwealth of Kentucky

In the event the Respondent should leave Kentucky to reside or practice outside of Kentucky or for any reason should the Respondent stop practicing dentistry in Kentucky as defined in KRS 313.010(11) [KRS 313.010(2)] for 60 days or more (hereinafter for the purposes of this Settlement Agreement only shall be referred to as "Inactive Status"), the Respondent shall notify the Board in writing within ten (10) days of the date(s) of beginning his Inactive Status. Respondent's Inactive Status shall toll the running of the scope, time and terms of this Settlement Agreement and this Settlement Agreement shall be automatically extended, at a minimum, for the time during which Respondent is deemed to have been in an Inactive Status. If Respondent desires to terminate his

Inactive Status, he shall petition the Board for the reinstatement if this Settlement Agreement before practicing dentistry in the Commonwealth of Kentucky as defined in KRS 313.010(11).

Resolution of Order and Notice of Immediate, Temporary Suspension

The Board's Order and Notice of Immediate, Temporary Suspension dated November 13, 2009 (approved by the Board on November 21, 2009 and the violations of law expressly set forth therein are hereby resolved pending a majority vote of the Board [acting either in its entirety or pursuant to the powers granted in KRS 313.090(1)] accepting the this Settlement Agreement.

Immediate, Temporary Suspension Power of the Board

The Respondent expressly understands failure to comply with and complete all terms of this Settlement Agreement constitutes a violation of KRS 313.080(2)(1) for which the Law Enforcement Committee, shall issue an immediate, temporary suspension of the Respondent's license to practice dentistry for a period of not less than twenty four (24) months from the date of infraction or upon actual knowledge of the Board of such infraction, whichever is later, and a fine of not less than \$500.00 as administrative costs of the Board, prior to a hearing with the right to appeal such action as provided under KRS 313.085[formerly KRS 13B.125], and for which the LEC may impose additional disciplinary action after notice and opportunity to be heard. The Respondent agrees to indemnify the Board for any costs, including reasonable attorney's fees, if the Board finds, after notice and opportunity to be heard, that the Respondent has failed to comply with any provision of this Settlement Agreement.

Release of Liability

In consideration of execution of this Settlement Agreement, the Respondent (for the Respondent personally, and for the Respondent's executors, administrators, successors and assigns) hereby releases and forever discharges the Commonwealth of Kentucky and the Kentucky Board of

Dentistry, and each of their members, agents, and employees in their individual and representative capacities, from any and all manner of actions, causes of action, suits, debts, judgments, executions, claims, and demands whatsoever, known and unknown, in law or equity, that the Respondent ever had, now has, may have or claim to have against any or all of the persons or entities named in this Paragraph, arising out of or by reason of this investigation, this request for reinstatement of license, this disciplinary action, this Settlement Agreement, or its administration.

Acceptance by the Board

It is hereby agreed between the parties this Settlement Agreement shall be presented at the next regularly-scheduled meeting of the Law Enforcement Committee of the Kentucky Board of Dentistry (the "LEC") with a recommendation for approval from General Counsel for the Board.

The Respondent understands that the LEC is free to accept or reject this Settlement Agreement, and if rejected, a formal disciplinary hearing on the accusations against the Respondent may be scheduled. The Respondent hereby agrees to waive any right the Respondent might have to challenge the impartiality of the Board, based solely upon the presentation of this Settlement Agreement, to hear the disciplinary accusation if, after review by the Board, this Settlement Agreement is rejected.

If the Settlement Agreement is not accepted, it shall be regarded as null and void. Admissions by the Board or the Respondent in the Settlement Agreement will not be regarded as evidence for or against the Respondent at any subsequent disciplinary hearing. The Respondent will be free to defend and no inferences against the Respondent will be made from the Respondent's willingness to have entered into this Settlement Agreement.

The Settlement Agreement will not be submitted for LEC consideration until after it has

been agreed to and executed by the Respondent. The Settlement Agreement shall not become effective until it has been approved by a majority of the LEC and endorsed by a representative member of the Board.

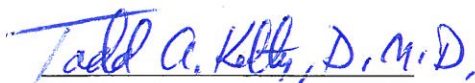
Cooperation with the Board

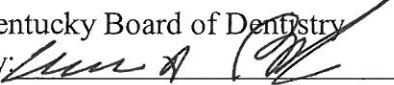
The Respondent agrees to permit and cooperate with the Board, its members, agents, and employees, and its Well-Being Committee and representatives, to monitor the Respondent's compliance with the terms and conditions of this Settlement Agreement. The Respondent shall sign and file any appropriate authorizations and/or releases for information with the LEC as may be requested.

Complete Agreement

This Settlement Agreement consists of nine (9) pages, and embodies the entire agreement between the LEC and the Respondent. This Settlement Agreement shall constitute a binding contract, upon approval by the LEC between the Respondent and the Board. The Respondent shall not rescind, revoke, or withdraw this Settlement Agreement prior to its presentation to the LEC at its regularly scheduled meeting. It may not be altered, amended or modified without the express written consent of both parties.

Have Seen, Understood, and Approved:


Todd Kolter, D.M.D.
7863 St. Andrews Road
Louisville, Kentucky 40258
Respondent

Kentucky Board of Dentistry
By: 
William A. Bausch, General Counsel
Kentucky Board of Dentistry
312 Whittington Pkwy, Suite 101
Louisville, Kentucky 40222
Counsel for the Board

Date: 11-29-10



Dana R. Kolter, Attorney at Law
Post Office Box 2199
Louisville, Kentucky 40201
Attorney for Respondent

Date: 11/24/10